

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

FLOYD JENNINGS,

Plaintiff,

FILE NO. 2:06-CV-235

v.

HON. ROBERT HOLMES BELL

UNKNOWN WEBERG, et al.,

Defendants.

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**ORDER AND JUDGMENT ADOPTING REPORT AND RECOMMENDATION**

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The matter was referred to the Magistrate Judge for screening, pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A and 42 U.S.C. § 1997e(c). The Magistrate Judge issued a Report and Recommendation ("R&R") recommending that this Court dismiss the action for failure to state a claim (docket #3). The matter presently is before the Court on Plaintiff's objections to the R&R (docket #4).

This Court reviews *de novo* those portions of an R&R to which objections are made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court may accept, reject or modify any or all of the Magistrate Judge's findings or recommendations. *Id.*

In his complaint, Plaintiff alleges that Defendants routinely failed to protect him from an HIV-positive prisoner who spits and throws urine at African-American prisoners, including Plaintiff. The Magistrate Judge concluded that Plaintiff failed to state a claim on

which relief could be granted because he failed to demonstrate physical injury sufficient to meet the requirement of 42 U.S.C. § 1997e(e). Section 1997e(e) provides that "[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."

In his objections, Plaintiff does not dispute the Magistrate Judge's conclusion that he did not allege physical injury. Instead, he argues the general unfairness of a requirement that he be injured – in this case, by contracting HIV – before he states a claim for relief.

This Court, however, is not permitted to ignore the clear meaning of a federal statute on the basis of its own conclusion that its application would be unfair. Congress clearly and unequivocally has adopted a physical injury requirement, and Plaintiff has not alleged a physical injury. He therefore fails to state a claim for relief.

Having considered each of Plaintiff's objections and finding no error, the Court hereby denies Plaintiff's objections and adopts the Report and Recommendation of the Magistrate Judge as the opinion of the Court. Accordingly,

**IT IS ORDERED** that Plaintiff's objections (docket #4) to the Report and Recommendation of the Magistrate Judge are **DENIED** and the Report and Recommendation of the Magistrate Judge is **ADOPTED** in its entirety as the opinion of this Court.

**IT IS FURTHER ORDERED** that Plaintiff's complaint is dismissed for failure to state a claim, pursuant to 28 U.S.C. §§ 1915(e)(2), 1915A and 42 U.S.C. § 1997e(c).

**IT IS FURTHER ORDERED** that the Court finds no good-faith basis for appeal within the meaning of 28 U.S.C. § 1915(a)(3).

Date: January 8, 2007

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
CHIEF UNITED STATES DISTRICT JUDGE